

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BETSY A. NAJJAR,

Plaintiff,

v.

CIV 98-1413 JC/KBM

KENNETH S. APFEL, Commissioner,
Social Security Administration,

Defendant.

**MAGISTRATE JUDGE'S AMENDED PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

This matter is before the Court on Plaintiff's Objections to Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 16*), filed September 13, 1999. I have considered Plaintiff's objections, in light of the record and of the relevant law, and conclude that they are well taken in part. Specifically, Plaintiff's objection is valid that the proposed finding and recommended disposition, and the administrative law judge's analysis, should have considered Dr. Romanik's RFC assessment in conjunction with other doctor's reports in the record. [Objections, pp. 2-3]

In her Memorandum in Support of Motion to Reverse and Remand for a Rehearing [*Doc. 12*], Plaintiff argued that the ALJ should have afforded her the opportunity to have medical testing performed in a consultative examination to determine the cause of her diarrhea as Dr. Arora suggested. [MIS 3] Though showing the *cause* of Plaintiff's diarrhea does not necessarily

prove that the diarrhea had a disabling *effect*, Plaintiff correctly points out that the RFC upon which the ALJ relied in finding no disability exists largely in isolation. Nevertheless, the record as it now stands does not support an outright reversal and award of benefits.

As such, I recommend remanding the case to the Commissioner for a rehearing after the Commissioner has afforded Plaintiff the opportunity to undergo a consultative examination. The consultative examination shall specifically address the cause or causes of Plaintiff's diarrhea; any and all disabling effects of the diarrhea, including fatigue, or disabling effects resulting from gastritis or status post lobectomy of the lungs; and shall make a specific finding as to how any such impairments have affected Plaintiff's ability to work. The Commissioner shall then consider the results of this consultative examination, in light of the current record, to determine whether Plaintiff qualifies for supplemental security income benefits.

In making this recommendation of remand, I express no opinion on the merits of Plaintiff's claims. Timely objections to the foregoing may be made pursuant to 28 U.S.C. § 636(b)(1).



Karen B. Molzen
UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the United States District Court pursuant to 28 U.S.C. § 636 (b)(1). A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.

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